IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 805 of 2003

Between:

M/s.Tirumala Wines Rep by its Proprietor N.Ramulu Goud
D.No.42-172 , Anjaiahnagar, Jagadgirigutta, Qutubullapur Mandal , RR.Dist.

..... PETITIONER

AND

1 The Commissioner of Prohibition & Excise
A.P , Hyderabad.
2 The Dy.Commissioner of Prohibition & Excise
Hyderabad.
3 The Prohibition & Excise Superintendent
RR.Dist , Narayanaguda, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ order or direction preferably one in the nature of Writ of Mandamus declaring the impugned order of the 3rd respondent Dt: 16-11-2002 in CR.No.E4/10108/2002 rejecting the claim of the petitioner to refund the amount of Rs.3,00,000/- together with interest thereon collected in excess towards the license fee for the Excise Year 1998-1999 in respect of the Petitioner Wine Shop as illegal, arbitrary , and contrary to law and consequently direct the respondents to refund the said excess amount collected from the petitioner to the petitioner together with interest thereon forthwith.

Counsel for the Petitioner: MR.JALLI KANAKAIAH

Counsel for the Respondents No.1 to 3: GP FOR PROHIBITION & EXCISE.

The Court made the following:

Oral order:-

The petitioner, a proprietary firm, obtained an IL. 24 licence for retail sale of liquor in Anjaiahnagar, Jagadgirigutta, Ranga Reddy district, during the excise year 1998-99 on the payment of licence fee of Rs.9,00,000-00. As per the excise policy of the said year, IL 24 shops located beyond 5 K.Ms., of the peripheral area of the city were liable to pay licence fee of Rs.6,00,000-00, while those located within 5 K.Ms., of peripheral area have to pay a licence fee of Rs.9,00,000-00. As the licence fee of Rs.9,00,000-00 was collected from the petitioner, though according to him, his premises was located beyond 5 K.Ms., from the peripheral area of the city, the petitioner made a representation for re-fixation of the licence fee. On his representation, there being no action or response, he filed W.P.No. 4673 of 1999, which was disposed of by this court by the order dated 09-03-1999 directing the Prohibition and Excise Superintendent, Ranga Reddy district to dispose of the petitioner's representation dated 26-11-1998 within a fortnight from the date of receipt of a copy of the order of this court. In view of the orders of this court above, the 3rd respondent caused an inquiry into the representation of the petitioner and for measuring the distance between the premises and the city limits. On such inquiry, it was found that the petitioner's licensed premises located at door No.42-172, Jagathgirigutta, Ranga Reddy district was at a distance of 5.2 K.Ms., from the peripheral area of Municipal Corporation of Hyderabad. This was substantiated by the certificate of the Executive Engineer, R & B Department also. Thereupon, it would appear that the 3rd respondent sought legal opinion from the Government Pleader concerned and was advised that licence fee was erroneously determined treating the shop in question as being located within the belt area of 5 K.Ms., from the peripheral area of M.C.H. On the basis of this advice, annual licence fee of the petitioner for the subsequent year i.e., 1999-2000 was fixed at Rs.6,00,000-00 by the proceedings of the 3rd respondent dated 14-09-1999. The petitioner, there being no response to his earlier representation for re-fixation of licence fee collected from him for the year 1998-99, made another representation/application dated 20-08-2002 for refund of the excise licence fee collected from him for the year 1998-99. This application was rejected by the 3rd respondent by the order dated 16-11-2002.

Aggrieved thereby, the writ petition is filed.

As is apparent from the judgment of this court dated 09-03-1999 in W.P.No. 4673 of 1999, the petitioner's representation for re-fixation of the licence fee was made on 26-11-1998, around seven (7) months from the date of issue of the IL-24 licence to him. Thereafter, on 14-09-1999 the 3rd respondent determined, on the basis of recorded material that the appropriate licence fee that ought to be collected from the petitioner is Rs.6,00,000-00 and not Rs.9,00,000-00. It was, therefore, incumbent on the respondents to have refunded the excess licence fee collected from the petitioner. They did not do so. Aggrieved by intransigent conduct of the respondents in withholding the amount legitimately due to him, the petitioner submitted another representation dated 20-08-2002. This representation is rejected by the 3rd respondent by his order dated 16-11-2002 characterizing his application 'as time barred'.

The chronology of events adverted to above discloses that the order dated 16-11-2002 of the 3rd respondent rejecting the petitioner's request for refund of the excess licence fee collected from him for the year 1998-99 is patently misconceived, unsustainable and arbitrary. There is no justification for denying the petitioner refund of the excess licence fee collected. An essential ingredient of rational governance is recognition of error and correction when legitimately called upon to do so. The respondents have erroneously collected excess licence fee from the petitioner and ought to have refunded such excess amount to him, particularly, when the demand for refund was made with expedition by the licencee-petitioner.

In the aforesaid circumstances, the writ petition is allowed. The respondents are directed to refund the excess licence fee of Rs.3,00,000-00 (Rupees three lakhs only) collected from the petitioner for the excise year 1998-99 in respect of the IL 24 licence of the petitioner, in any event, within a period of four (4) weeks from the date of receipt of a copy of this order. There shall be, however, no order as to costs.

GODA RAGHURAM, J

Dt. 30-12-2004

Pvks/*

That Rule Nisi has been made absolute, as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on Thursday the 30th day of December, Two thousand and four.

To

1 The Commissioner of Prohibition & Excise
A.P , Hyderabad.
2 The Dy.Commissioner of Prohibition & Excise
Hyderabad.
3 The Prohibition & Excise Superintendent
RR.Dist , Narayanaguda, Hyderabad.

4.2CCs to the Government Pleader for Prohibition & Excise, A.P. High Court Buildings, Hyderabad (OUT).

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